

# EXHIBIT 2

1 right, it's a different story than us taking away a present  
2 right to your client. I think it's a tough brief, but go  
3 ahead and write it.

4 MR. BURRER: And, Your Honor --

5 THE COURT: I think, Mr. Burrer, you probably  
6 wrote the *Tri-Union* Opinion when you were my law clerk so  
7 you ought to know what --

8 MR. BURRER: Yeah.

9 THE COURT: -- you're doing on this, so go ahead,  
10 take your shot. I think you'll not get there.

11 MR. BURRER: And, Your Honor, I'm not so sure that  
12 all of the Plan transactions have been proposed under 363.

13 THE COURT: It doesn't --

14 MR. BURRER: And I think the Plan --

15 THE COURT: We're dealing with -- it doesn't  
16 matter how they define it. It matters how I define it.

17 MR. BURRER: Understood, Your Honor.

18 THE COURT: All right. Thank you.

19 Mr. Eisenberg.

20 MR. EISENBERG: Thank you, Your Honor.

21 OPENING STATEMENTS ON BEHALF OF  
22 US SPECIALTY INSURANCE COMPANY

23 MR. EISENBERG: Philip Eisenberg. I represent a  
24 number of clients. As accurately reflected by Mr. Perez,  
25 one of my clients, US Specialty Insurance Company, has

1 withdrawn its objections and we have entered into an ongoing  
2 arrangement contingent upon the effective date and certain  
3 things happening for an additional bonding facility for  
4 NewCo. And so that is -- that has been noticed on the  
5 Docket and Mr. Perez has accurately described that.

6           With regard to Houston HCCI International, I will  
7 simply point out that we are finalizing our documentation,  
8 Your Honor. I will significantly streamline any proceedings  
9 before Your Honor. Once our discussions here on opening are  
10 done, I think it may be appropriate to take a brief recess,  
11 Your Honor, to allow the final ink to dry on those things  
12 because I think it will make for a more comfortable day for  
13 everybody.

14           And I'm sure that Mr. Brescia and Mr. Miller will  
15 have more to say about that. They are the ones who are set  
16 up to do opening on those arguments, Your Honor, and I think  
17 they would if it was Your Honor's pleasure --

18           THE COURT: Let me ask, Mr. Eisenberg.

19           Does it make some sense to postpone those opening  
20 arguments to wait to see if the deal gets done and if it  
21 doesn't, let them come back and make their opening  
22 statements at that point?

23           MR. EISENBERG: Absolutely, Your Honor. And I was  
24 just going to do cleanup on that, so I appreciate that  
25 courtesy as well, Your Honor, and I think that Mr. Miller is

1 smiling and so I appreciate that.

2 For my other clients, which are W&T Offshore and  
3 Merit Energy, I was -- of course, the *Tri-Union* Opinion I  
4 was -- Mr. Burrer wrote it, okay, so.

5 THE COURT: It's been about 15 years, but my guess  
6 is he did all the drafting on that and I probably cleaned up  
7 a verb or two, but that's probably about it.

8 MR. EISENBERG: Right, right. So for W&T, the --

9 THE COURT: He was like 26 years old and now it's  
10 going to get thrown back at him, I believe.

11 MR. EISENBERG: He still looks 26 years old. That  
12 is a compliment so -- maybe not so much. So you know, we  
13 have been working very diligently with the Debtors. We have  
14 language that we thought was finally approved. We're  
15 waiting on the Confirmation Order to come for W&T and Merit  
16 and for two of our other clients as well, McMoran and  
17 Conoco, that Mr. Kuebel and Mr. Knapp have been dealing  
18 with. And so that language is pretty much the basis for  
19 what BP put in there for one of its legs of its four points,  
20 and so we also think that we need to have that come to  
21 ground here. Those are very important issues.

22 I wasn't sure about the argument, Your Honor, with  
23 regard to -- and I think Your Honor is thinking about it the  
24 same way I am and that is: If an entity buys a property  
25 from the Federal Government and signs on, and says, "I am

1 now liable for whatever obligations go with that lease that  
2 I just got assigned," then on a going forward basis, if the  
3 Government were to call on another party in the future to do  
4 decommissioning on that property, then that company that did  
5 the decommissioning would have whatever rights it would be  
6 subrogated to not because of an arrangement before this  
7 bankruptcy, before the effective date, before the 363 sale,  
8 but it would be subrogation rights for having performed on  
9 the demand from the Government because the NewCo agreed on a  
10 going forward basis to comply with the obligations under the  
11 lease and be obligated to the Government. So it's not the  
12 old obligations that they're subrogated to, but the new ones  
13 that they're signing onto, Your Honor. And we don't know  
14 whether or not and when that would happen, but it certainly  
15 has --

16 THE COURT: Here's the problem, Mr. Eisenberg,  
17 which is: If NewCo, let's say, puts in some new platforms  
18 out there after they acquire, I agree. As to those new  
19 platforms, that's new operations and whoever has subrogation  
20 rights will have subrogation rights as to the new platforms.

21 As to the old platforms, those are rights that we  
22 could cut off and because we could cut them off, we can also  
23 cut them off less than totally. And if you're telling me  
24 that you want subrogation rights against the new platform, I  
25 got it, but if you're telling me you want subrogation rights

1 against the historic work, that would get in the way  
2 obviously of meeting the Government's goal that is preserved  
3 in *Midlantic* and that is actually contrary to the language  
4 of 363 and contrary to abandonment language, but the Supreme  
5 Court can do that, I can't. And so once the Government  
6 isn't going to insist on its *Midlantic* rights, I can use  
7 abandonment and I can use 363.

8 MR. EISENBERG: Two observations on that. One, on  
9 any new platforms or wells that are drilled, the Government  
10 has no rights against the predecessors going back.

11 Second, on the new stuff --

12 THE COURT: No, I understand that.

13 MR. EISENBERG: Okay.

14 THE COURT: But to the extent that the  
15 predecessors want to assert some rights there, I'm not  
16 cutting those off. It's historic ones. It's the ones that  
17 go with the property where I can order the property sold  
18 free and clear. They can't --

19 MR. EISENBERG: But the -- right, they could be  
20 sold free and clear, but they still own them and they own  
21 them subject to the regulations on a going forward basis.  
22 And as part of that bundle of rights that they're getting,  
23 they have the obligation as the current operator and current  
24 record title owner to decommission. And to the extent that  
25 they did not perform in the future, right, and --

1 THE COURT: I understand your argument. It's  
2 wrong, but I understand it.

3 MR. EISENBERG: Okay, Your Honor. I don't  
4 necessarily agree with you on that and I --

5 THE COURT: I know. I know you don't.

6 MR. EISENBERG: And so -- and I don't know how you  
7 can cut something off that hasn't arisen because it can't  
8 arise until after the effective date.

9 THE COURT: Because it goes with the property. It  
10 doesn't exist in the ether. It's a right that goes with  
11 the sale of the property and Congress decided to write a  
12 provision that allows Debtors to abandon the property, that  
13 allows Debtors to sell property free and clear. In either  
14 of those instances, these rights wouldn't exist.

15 MR. EISENBERG: Well, then if the Government did  
16 that, they'd be cutting people's subrogation rights off and  
17 they'd have a hard time coming against them, but we'll see  
18 how that works out years from now.

19 THE COURT: I got it.

20 MR. EISENBERG: Okay. So anyway, going back to  
21 agreed language, Your Honor, the -- you know, we're just  
22 waiting to get the ink to dry on that, as well, and so I  
23 just wanted to let Your Honor know that, as well, which is  
24 why we're kind of standing down here and just trying to get  
25 this to be as consensual as possible and to shove off